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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Gary Cawley, et al.,

No. CV-22-00823-PHX-SPL

9 Plaintiffs,

ORDER

10 vs.

11 American Financial Security Life
12 Insurance Company, et al.,

13 Defendants.
14

15 Before the Court is Plaintiffs’ Amended Motion to Strike (Doc. 153), in which they
16 ask this Court to strike Defendant American Financial Security Life Insurance Company’s
17 (“AFSLIC’s”) Additional Statement of Undisputed Facts (Doc. 150) and Controverting
18 Statement of Facts (Doc. 151) on the grounds that these filings are prohibited by the Local
19 Rules of Civil Procedure. (Doc. 153 at 1). They also move to strike the portions of
20 AFSLIC’s Reply in Support of its Motion for Summary Judgment (Doc. 149) that refer to
21 the Additional Statement of Undisputed Facts (Doc. 150). (*Id.*). Also before this Court is
22 AFSLIC’s Response to Plaintiffs’ Motion to Strike (Doc. 154) and Plaintiffs’ Reply (Doc.
23 155). The Court now rules as follows.

24 In its Response to Plaintiff’s Motion, AFSLIC argues that its “undersigned counsel
25 attempted to follow what it understood to be a plain reading of LRCiv 56.1(b) read in
26 conjunction with LRCiv 7.2(m)(2). Counsel was in no way attempting to subvert this
27 Court’s Local Rules.” (Doc. 154 at 2). It argues that if the Court is inclined to strike the
28 Additional Statement of Undisputed Facts (Doc. 150) and its Controverting Statement of

1 Facts (Doc. 151), it “should not strike the Second Declaration of Jacob Armpriester [Doc.
2 150-2] that was filed in conjunction with ASFLIC’s [sic] Reply and cited in its ASOF”
3 because “Declarations are expressly permitted by Fed. Rule Civ. P. 56(c)(1)(a) and (c)(4)
4 to support ‘that a fact cannot be or is genuinely disputed.’” (Doc. 154 at 2). Furthermore,
5 it argues that the Court should not strike any portion of AFSLIC’s Reply (Doc. 149),
6 because the Court can simply disregard any citations to the separate statements of fact in
7 the Reply. (Doc. 154 at 4–5).

8 The Local Rules of Civil Procedure (“Local Rules” or “LRCiv”) provide that any
9 party moving for summary judgment must file a separate statement of material facts in
10 support of its motion. LRCiv 56.1(a). The opposing party may then file a response to the
11 motion for summary judgment and a separate statement of controverting facts. LRCiv
12 56.1(b). The original movant may file a reply in support of their motion for summary
13 judgment, but “[n]o reply statement of facts may be filed.” LRCiv 56.1(b). Because the
14 Local Rule is clear that reply statements of fact may not be filed, Plaintiffs’ Motion to
15 Strike the two reply statements of fact filed by AFSLIC (Docs. 150, 151) will be granted
16 as to those two documents. *See Elite Performance LLC v. Echelon Prop. & Cas. Ins. Co.*,
17 2022 WL 3567601, at *9 (D. Ariz. Aug. 17, 2022) (striking a controverting statement of
18 facts filed in support of a reply brief for failure to comply with LRCiv 56.1(b)). However,
19 the remaining question is whether the Declaration of Jacob Armpriester (Doc. 150-2) must
20 also be struck.

21 Plaintiffs argue that the Declaration is a “backdoor” means of filing a reply
22 statement of facts and is therefore an “attempt to circumvent” LRCiv 56.1(a). (Doc. 155 at
23 3). However, AFSLIC contends that the Declaration is expressly permitted by the rules and
24 should not be struck. (Doc. 154 at 5). “While the court may refuse to consider evidence
25 submitted for the first time in a reply, the Court may consider evidence and argument
26 submitted with a reply that is responsive to arguments raised in the non-moving party’s
27 brief in opposition.” *Ejonga v. Strange*, 2023 WL 4457142, at *1 (W.D. Wash. July 11,
28 2023). Here, the Declaration in question responds to arguments raised in Plaintiffs’

1 Response to AFSLIC's Motion for Summary Judgment (Doc. 140). The Declaration is
2 made "in support of" AFSLIC's Reply, not in support of its prohibited statements of fact.
3 (Doc. 150-2 at 1). The Court therefore declines to strike the Declaration (Doc. 150-2)
4 attached to AFSLIC's Additional Statement of Undisputed Facts.


5 Accordingly,

6 **IT IS ORDERED** that the Plaintiffs' Amended Motion to Strike (Doc. 153) is
7 **granted in part and denied in part.**

8 **IT IS FURTHER ORDERED** that Defendant American Financial Security Life
9 Insurance Company's Additional Statement of Undisputed Facts (Doc. 150) and
10 Controverting Statement of Facts (Doc. 151) shall be **stricken** as prohibited reply
11 statements of fact in violation of LRCiv 56.1(b). The Court will disregard the portions of
12 AFSLIC's Reply brief (Doc. 149) that refer to the stricken statements of fact. However,
13 the Second Declaration of Jacob Armpriester, attached as an exhibit (Doc. 150-2) to the
14 stricken Additional Statement of Undisputed Facts, shall not be stricken.

15 **IT IS FURTHER ORDERED** that Defendant American Financial Security Life
16 Insurance Company shall refile its Reply in Support of its Motion for Summary Judgment
17 (Doc. 149) with the Second Declaration of Jacob Armpriester attached as an exhibit to that
18 document. Furthermore, it should remove any reference to the stricken statements of fact
19 from its Reply.

20 Dated this 27th day of January, 2025.

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23 Honorable Steven P. Logan
24 United States District Judge
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